

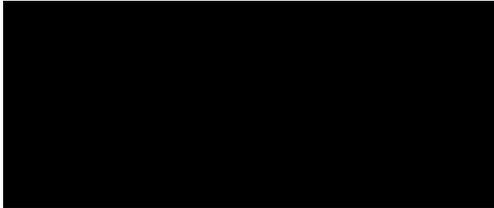
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 03 260 53944

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a religious instructor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief and additional documentation.¹

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide

¹ The record also contains a letter from [REDACTED], who asserts that he has been retained to represent both the petitioner and beneficiary in these proceedings. However, only the beneficiary signed the Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted with the letter.

nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on September 17, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious instructor throughout the two-year period immediately preceding that date.

In his letter of August 15, 2003, the petitioner's [REDACTED] stated that the beneficiary “has been teaching I Kuan Tao Religion for the past five years,” and had been teaching for the petitioner since November 2002. The petitioner submitted a copy of a September 30, 2002 certificate from the Southwest International University granting the beneficiary a master's degree in religious studies, and a certificate from the same institution recognizing the beneficiary as an instructor, beginning on October 1, 2002 and requiring authentication and renewal on September 30, 2004. The petitioner submitted no evidence to substantiate the beneficiary's work during the qualifying period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In a request for evidence (RFE) dated September 30, 2003, the director instructed the petitioner to submit evidence of the beneficiary's work history beginning September 16, 2001 and ending September 17, 2003. In response, the petitioner submitted what counsel refers to as the beneficiary's “statement of work history.” The statement does not indicate the author or the date of preparation. The document indicates that the beneficiary worked as a religious instructor for the petitioner from November 30, 2002, worked as a missionary/religious instructor with Chung Jeng Foundation training-missionary in 2002 (no additional dates indicated), performed “part-time religious work” while studying for her Master of Religious Study from 2001-2002, and in 1999-2001, spent one month “as staff of Master of I-Kuan Tao Religion while visiting the United States.” The petitioner submitted no other evidence to corroborate the beneficiary's employment during the qualifying period.

In his letter accompanying the response to the RFE, counsel stated that, as the beneficiary had worked for the petitioner for only a short period of time, no Form W-2, Wage and Tax Statement, documenting the beneficiary's compensation, was available. However, counsel submitted no copies of canceled paychecks or pay vouchers or any other documentary evidence to reflect the beneficiary's employment with the petitioner. Counsel also failed to submit any evidence of the beneficiary's work prior to coming to work for the petitioner. *Id.*

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The director noted that the beneficiary's work history indicated that she worked part-time in 2001 and 2002 while pursuing her master's degree in religious studies, and that her certificate as an instructor was for a period beginning on October 1, 2002.

On appeal, counsel asserts that "the certificate of religious instructor dated November 1, 2002 was issued at the time [the beneficiary] was dispatched by the religious association to the United States in R-1 status to undertake the religious position [with the petitioner]." The certificate referred to by counsel appears to be the job offer from the petitioner. The instructor certificate referred to by the director was issued by Southwest International University after the beneficiary received her master's degree, and implies that the beneficiary was not working or qualified as a religious instructor prior to that date.

Counsel also states that the beneficiary's degree from Southwest International University was through a correspondence and "online remote education program." Counsel submits a "verified letter" from Southwest

International University, which states that the beneficiary "attended to [sic] Southwest International University (SWIU) from March 2001 to September 2002, Earned degree Master of Art in Religious Studies Majoring in Religious Psychology in Taiwan Branch. This is a program offered by our University especially for working adults of foreign students." The letter does not state that the beneficiary's attendance was through correspondence and online participation.

The petitioner also submitted an "employment letter" from the I-kuan Tao Chug Jeng Foundation, "certifying" that the beneficiary was employed by that organization "as a full time instructor effective June 2000" to June 2002. The letter indicates that the beneficiary was given a monthly allowance of NT\$5,000 plus room and board. The petitioner submitted no documentary evidence, such as pay vouchers, canceled checks or verified work schedules, to substantiate the beneficiary's employment with the I-kuan Tao Chug Jeng Foundation. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Further, the petitioner submitted no evidence of the beneficiary's employment from June 2002 until September 17, 2003, the date the petition was filed.

The evidence is insufficient to establish that the beneficiary was continuously employed as a religious instructor for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner states that it will pay the beneficiary an allowance of \$1,200 per month plus "other fringe benefits such as rent, cost of living and health insurance allowance."

To establish its ability to pay the proffered wage, the petitioner submitted a copy of its "statement of operations" for the period January 1 through July 21, 2003, a copy of its two-year "forecasted statement of operations," a copy from its bank indicating that it opened a savings account in July 23, 2003 and had a balance of \$10,033 as of July 25, 2003, and a copy of a 12-month certificate of deposit for \$30,000.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the other required types of evidence. The petitioner submitted no evidence that it paid the beneficiary during her employment with the petitioner pursuant to her R-1, nonimmigrant religious worker, visa.

The evidence does not establish that the petitioner had the ability to pay the beneficiary the proffered wage as of the date the petitioner was filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.